

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

WASTE MANAGEMENT OF WISCONSIN,  
INC.

and

CASE 30–CA–17000

TOM W. PRUDHOMME, an Individual

*Ryan E. Connolly, Esq.*, for the Government.<sup>1</sup>  
*Fredrick L. Schwartz, Esq.*, and *Alan A. Satyr,*  
*Esq.*, for the Company.<sup>2</sup>

DECISION

Statement of the Case

**WILLIAM N. CATES, Administrative Law Judge.** The Government contends Charging Party Tom W. Prudhomme (Prudhomme) was constructively discharged by the Company on May 14, 2004,<sup>3</sup> because of his union sympathies and activities. A constructive discharge is not a discharge at all but a quit which the National Labor Relations Board (Board) treats as a discharge because of the circumstances which surround it. The Company defends that it has not violated the National Labor Relations Act, as amended, (Act) in any manner alleged in the complaint and asserts Prudhomme voluntarily quit his employment and thus is not entitled to the benefits of a discharge while quitting his job.

On the entire record,<sup>4</sup> including my observation of the demeanor of the witnesses,<sup>5</sup> and after considering briefs filed by the Government and Company, I conclude, as more fully

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<sup>1</sup> I shall refer to Counsel for General Counsel as Government Counsel or the Government.

<sup>2</sup> I shall refer to the Respondent as the Company.

<sup>3</sup> All dates herein are 2004 unless otherwise indicated.

<sup>4</sup> Trial was held in Green Bay, Wisconsin on November 7, 2005. The charge was filed on September 16. The Complaint and Notice of Hearing issued on August 18, 2005.

<sup>5</sup> Credibility resolutions have been primarily made based upon witness demeanor; however, I have also considered the weight of respective evidence, established and/or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. If any evidence could be considered contrary to my factual finding such evidence has not been ignored but rather been discredited.

explained below, the Company did not violate the Act in any manner set forth in the complaint.

## I. Facts

### A. Overview

The Company, with an office and place of business in Peshtigo, Wisconsin,<sup>6</sup> is engaged in the waste disposal business. The Company provides its waste disposal services to various cities, towns, municipalities and private corporations in northeastern Wisconsin and the northwestern portion of the Michigan peninsula.<sup>7</sup> Some of the Company's facilities are unionized while others are not. The Green Bay, Wisconsin facility, for example, is unionized. The Peshtigo facility was unionized at the time it was closed on May 14. The Iron River facility located between Crystal Falls and Iron River is not unionized. All of the Company's northeastern Wisconsin and Michigan peninsula facilities are managed by Senior District Manager William Eisch (Manager Eisch).<sup>8</sup>

The Company's Peshtigo, Wisconsin facility is approximately 45 miles north of Green Bay, Wisconsin. As noted the Company closed its Peshtigo facility on May 14. Manager Eisch announced the closing on that date. At the time of the closing Peshtigo employees were represented by Teamsters Local 75 (Union). The Union had been certified as the Peshtigo employees' collective bargaining representative on November 20, 2003. It appears (see below) that there were approximately 28 or so employees at Peshtigo at the time it was closed.<sup>9</sup> All Peshtigo employees were reassigned effective May 17 to other locations of the Company without change in pay, benefits or basic waste disposal job duties.

Approximately 5 or 6 Peshtigo employees were reassigned to the Green Bay facility where the employees are represented by the Union. Approximately 24 were reassigned to the Menominee, Michigan facility located approximately 60 miles north of Green Bay. The employees at Menominee are not represented by a union. The Iron River facility is approximately 125 miles north of Green Bay and its employees are not represented by a union. One Peshtigo employee, Prudhomme, was reassigned to the Iron River facility. Prudhomme's home is in Crivitz, Wisconsin. The parties stipulated the distance between Prudhomme's residence and the Iron River facility is 62 miles and the distance between his residence and the Green Bay facility is 63 miles. The distance between Prudhomme's residence and the Menominee facility is 38 miles. Prudhomme was assigned 4 residential routes to run at his assignment at the Iron River facility. The routes, each run on a different week day, were for the towns of Amberg, Pembine, Beecher and Goodman, Wisconsin.

<sup>6</sup> The Peshtigo office was closed on May 14.

<sup>7</sup> The Company in conducting its business operations during the past calendar year sold services valued in excess of \$50,000 directly to municipalities and private corporations located in and around Northeastern Wisconsin who themselves are engaged in interstate commerce. The evidence establishes, the parties admit and I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

<sup>8</sup> It is admitted that Manager Eisch is a supervisor and agent of the Company within the meaning of Section 2(11) and 2(13) of the Act.

<sup>9</sup> The exact number is not critical for a resolution of the issues herein.

## B. Brief Overview of Company's Reorganization

The Company started the reorganization in approximately 2002 which resulted in the closing of its Peshtigo facility. As a result of the reorganization Manager Eisch picked up, among other responsibilities, all of the Company's facilities of the upper peninsula of Michigan. This resulted in Manager Eisch being responsible for 7 or 8 facilities he had not previously been responsible for. Manager Eisch testified he visited the facilities, observed certain overlaps of coverage and eventually started focusing on the future of the Peshtigo facility. Manager Eisch testified he, on behalf of the Company, was looking to improve operations from a logistical point of view in order to bring about productivity and cost savings. Manager Eisch testified he selected Prudhomme for reassignment to the Iron River facility based solely on geography, namely, that Prudhomme lived the farthest north or closer to the Iron River facility than any other Peshtigo employee.

## C. Prudhomme's Work Experience and Union Participation

Prudhomme worked for the Company for approximately 5 years but has worked in the waste disposal industry for 26 years. Early on he worked for his parent's company, Nearnor Disposal, in Wisconsin and the upper peninsula of Michigan in various towns and districts including Goodman, Wisconsin. His parent's company was purchased by United Waste which in turn was purchased by USA Waste which merged with Waste Management. Prudhomme said he has performed "pretty much everything" that is done in the waste disposal business.

Prudhomme worked at the Menominee facility from 1996 until sometime in 1999. It took Prudhomme 35 to 45 minutes to drive from his home to the Menominee facility. In 1999 Prudhomme requested and was granted a reassignment from Menominee to the Company's Antigo facility.

Prudhomme contacted the Union in 1999 because he said several employees at Antigo spoke of their unhappiness with the Company regarding, among other things, their chances for advancement. Prudhomme arranged a meeting at which information about unionization was provided and authorization cards were solicited. The organizing activities at Antigo ceased and no election was ever held.

Prudhomme testified he started working at the Peshtigo facility in early summer 2000. Two Peshtigo employees, who had heard of the union activities at Antigo, asked if he would try to get the Union in at Peshtigo. Prudhomme declined telling them it had been a bad experience at Antigo. Prudhomme testified the two Peshtigo employees thereafter contacted the Union and conducted an organizing campaign that culminated in an election in which the employees voted not to be represented by the Union. Prudhomme testified he had absolutely nothing to do with the Peshtigo 2000 campaign. Prudhomme testified that after the 2000 campaign he told Manager Eisch while they were alone that he had nothing to do with the campaign at all. According to Prudhomme, Manager Eisch responded that was not what he had heard.

A union organizing campaign at the Peshtigo facility in 2003 resulted in the Union being certified as the employees' collective bargaining representative. Prudhomme said he campaigned among his fellow workers for the Union "trying to hold them together." Prudhomme only attended the initial union meeting at which employees signed authorization cards for the Union. Prudhomme did not thereafter solicit union cards, however, he did wear two "quarter" size union buttons on his hat. Prudhomme wore his hat to work in the morning but supervisors and managers were not present at the time. He said he later wore his hat in the shop and break room. Prudhomme did not wear his hat with the union buttons when managers were around because he "was always a little scared to flaunt it in front of management."

Prudhomme testified that during the past five years he had not distributed any union literature in the presence of Company managers or supervisors because he wanted to keep his activities as secret as possible from the Company.

Prudhomme testified that during the 2003 union campaign employees were required to attend Company meetings at which outside representatives for the Company "tried to dissuade us from the Union." Prudhomme testified he "would generally speak up" at the meetings and at one such meeting brought along a copy of the collective bargaining agreement covering the employees at the Green Bay facility to show them. Prudhomme testified he stated the union health care benefits were probably better than the Company's because one could go to any doctor rather than to a preferred provider physician. Prudhomme said he also spoke at one of the Company meetings about the benefits of having a union versus not having one.

Prudhomme testified that during the 2003 campaign Scott Gerarden, whom he identified as the site manager at the Menominee facility, stated to him while he was off loading his truck at the Menominee landfill "you know we could all lose our jobs over this, me included." Prudhomme "assumed he meant the union campaign."

Prudhomme acknowledged that from the time in November 2003, when the Peshtigo facility employees became unionized, until the facility closed in May 2004 no supervisor, manager or member of management said anything to him about his involvement with the Union. Prudhomme specifically stated Manager Eisch never said anything to him about the Union. Prudhomme thought he might have commented to Eisch after the election that he kind of wished none of this had ever happened.

#### **D. Manager Eisch's Position on Unionization**

The Company opposed unionization at its Peshtigo location. When asked by Government Counsel for his personal views on unionization Manager Eisch explained he thought any employee was better off representing himself because the employee could just walk into his office and talk without having to go through a third party. Manager Eisch noted that two of the facilities he is responsible for are unionized and he has not had a grievance filed at either of the facilities in years. During the 2003 campaign Eisch never prepared any campaign literature and only attended the very last of the Company conducted employee meetings. At that last meeting Eisch asked the employees to give him a chance to see if they could work it out without the Union.

Manager Eisch testified that at no time during the 2003 campaign or afterwards did he ever speak with Prudhomme about the Union. Eisch also said Prudhomme never made his union sentiments known to him. Eisch said he had no reason to believe Prudhomme supported the Union. Eisch testified he was never at any Company held employee meeting where Prudhomme questioned or commented on the differences in insurance coverage between Green Bay, a unionized facility, and non-unionized locations of the Company. According to Eisch no unfair labor practice charges were filed regarding the 2003 campaign and election.

Manager Eisch specifically denied responding “that’s not what I heard” to Prudhomme, during the 2000 union campaign at Peshtigo, when Prudhomme told him he was not for the union.

### **E. Certain Credibility Determinations**

Manager Eisch impressed me as a credible witness. He testified first as an adverse witness called by Government Counsel. He answered all questions without hesitation and candidly. He did not appear overly cautious but rather answered with apparent confidence he was telling the truth as best he could recall. When Eisch testified for the Company, he again did so in, I am persuaded, a truthful manner, again being very responsive and candid. I credit Eisch’s testimony. Accordingly, I find Eisch did not respond to Prudhomme after the 2000 union campaign at Peshtigo “that’s not what I heard” when Prudhomme asserts he told Eisch he had nothing to do with that union campaign. I likewise credit Eisch’s testimony that he never at any time during or after the 2003 union campaign speak with Prudhomme about the Union. Eisch’s testimony is supported by Prudhomme’s acknowledgement no one from management spoke with him between November 2003 and May 2004 about his involvement with the Union. Prudhomme specifically acknowledged Eisch never said anything to him about the Union. I credit Eisch’s testimony that Prudhomme never made his union sentiments known to him and that he had no reason to believe Prudhomme supported the Union. Prudhomme acknowledged he had not in the previous five years distributed any union literature in the presence of management because he wanted to keep his union activities as secret as possible from management. Prudhomme also said he did not wish to “flaunt” his union support in front of management. I credit Eisch’s undisputed testimony that he never attended employee meetings at which Prudhomme questioned or commented on insurance coverage at the Company. I credit Eisch’s testimony that he personally opposed unionization in general at the Company and asked employees at the last employee meeting to give him a chance to see if they could work without the Union. I note no unfair labor practice charges were filed regarding the 2003 campaign and election.

I accept Prudhomme’s undisputed testimony that he contacted the Union in 1999 while employed at the Antigo facility and arranged a meeting at which information was provided regarding unionization and at which authorization cards were solicited. That campaign ended without an election. I accept Prudhomme’s undisputed testimony that he had absolutely no involvement with the 2000 union campaign at the Peshtigo facility. I accept Prudhomme’s testimony he campaigned among his fellow workers during the 2003 union campaign at Peshtigo and attended the initial union meeting at which authorization cards were

signed. I accept his testimony he wore two “quarter” size union buttons on his hat but he did not wear his hat when supervisors were around and he did not flaunt his union involvement but tried to keep it secret. While I credit Manager Eisch’s testimony that Prudhomme never raised insurance coverage concerns at the employee meeting Eisch was present at, I accept  
 5 Prudhomme’s uncontradicted testimony he raised such concerns at employee meetings conducted by outside representatives of the Company during the 2003 union campaign. Finally, I accept Prudhomme’s uncontradicted testimony that during the 2003 union campaign Menominee Site Manager Gerarden told him while they were alone at the Menominee landfill “you know we could all lose our jobs over this, me included.” I note Prudhomme assumed  
 10 Gerarden meant the union campaign.

#### **F. Physical Examinations for Commercial Driver’s License**

Prudhomme testified drivers were required to have a commercial drivers license  
 15 (CDL) for work at the Company. In order to keep a CDL valid, a current medical card is required. A certified medical examination is required every other year to keep the medical card valid. The Company traditionally paid all costs related to such medical examinations. Prudhomme testified that in March or April 2004 Peshtigo’s previous site manager Dan Gildernick<sup>10</sup> announced at an employee meeting the Company would no longer pay for  
 20 physical examinations related to the medical cards. Prudhomme said he complained that the Company had said during the 2003 union campaign that all working conditions would remain the same and he wanted to know why the Company was changing its practice on this one. According to Prudhomme, Gildernick then contacted Company Health and Safety Director Johnny Johnson who informed Gildernick the Company paid for the physicals and Gildernick  
 25 told the employees Johnson’s response and Prudhomme’s physical was paid for by the Company.

Roll-up driver Gildernick, a union member, testified that when he worked in supervision at Peshtigo he conducted safety meeting with the employees once a week. He  
 30 said agendas for the safety meetings are set at corporate level. Gildernick denied ever saying at any safety meeting, and specifically at any of the April 2004 safety meetings, that the Company would no longer pay for Department of Transportation (DOT) physicals. Gildernick specifically denied ever discussing with Prudhomme whether the Company would pay for Prudhomme’s DOT required physical.  
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Additionally, Gildernick testified he never talked with Prudhomme about his union activities and Prudhomme never made his union sentiments known to him. Gildernick testified he never told Manager Eisch that Prudhomme was for the Union. Gildernick had no  
 40 role in the reassignment of employees that resulted in Prudhomme being reassigned to the Iron River facility.

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<sup>10</sup> At the time of the trial herein Gildernick was no longer a supervisor but rather a roll-up truck driver for the Company.

## G. Certain Credibility Determination

I credit union member and roll-up driver Gildernick's testimony regarding safety meetings held when he was Menominee Site Manager in the spring of 2004. Specifically, I credit Gildernick's testimony that he did not announce nor discuss a discontinuance of payment for physical examinations related to DOT requirements for CDLs. In crediting Gildernick, I note the Company traditionally paid the costs related to the physicals. No one other than Prudhomme testified regarding any change in that policy. Agendas for the safety meetings are established at corporate level where the policy had always been to pay for such physicals. If the Company intended to change such policy, it would more than likely have been reflected on the agendas of the safety meetings in question. Prudhomme did not exhibit a believable demeanor while testifying on this subject. In summary, I am persuaded Gildernick did not discuss a discontinuance of payment for DOT required physicals and that he never had such discussions with Prudhomme as testified to by Prudhomme.

## II. The Reassignments and Related Matters

### A. Prudhomme Reassignment

Peshtigo employees were directed on Thursday May 13 to attend a Company meeting on May 14. Prudhomme learned on Thursday from a fellow worker, while at a local tavern, the Company would announce the closing of the Peshtigo facility at the scheduled Friday meeting. Manager Eisch made just such an announcement. He informed the employees that when they finished their routes that day and returned to the Peshtigo facility they would be told where to report for work on Monday, May 17.

Prudhomme reported to Manager Eisch at the end of his shift. According to Prudhomme, Eisch reassigned him to the Iron River facility to run residential routes in Amberg, Beecher, Pembine and Goodman. Prudhomme protested telling Eisch he did not know any of those routes except the Goodman route. Prudhomme stated Eisch asked if the Company had gotten the routes in question from Prudhomme's parents. Prudhomme told Eisch that only the Goodman route came from his parents old company. Prudhomme said that when he told Eisch he did not know the routes, Eisch told him he would just have to deal with it. Prudhomme said he was told he was being reassigned to Iron River because he lived the farthest north and closer to the routes than any other employee being reassigned. Prudhomme complained it was too far to drive from his home to that area and he was not going to do it in the wintertime. Prudhomme said he told Manager Eisch that on the following Monday he would "punch in at Peshtigo, do the route the best he could, deliver the truck to Crystal Falls or Iron River, which ever you call it, and come back to Peshtigo, punch out and that would be [his] last day."

Prudhomme ran the assigned Beecher route on May 17. He explained it took him a while to locate the route sheets and truck logs but finally found them in the truck he drove. Upon completion of the route Prudhomme telephoned Iron River Site Manager Dennis Smejkal to find the location of the facility and for instructions on the disposition of the route truck. Prudhomme obtained a ride from Iron River to Peshtigo with Smejkal and never thereafter returned to work for the Company. Prudhomme explained he quit because it was

too far to drive, it snowed too much in that area and “it would have been horrible work days until you at least learned the routes where you were going.”

Prudhomme acknowledged he ran the Beecher route and “didn’t miss anything.” He acknowledged he probably would have accepted a reassignment to the Green Bay facility. He likewise acknowledged he was told a semi-truck driver position would be open soon at the Iron River facility due to a retirement and was asked if he would give that position a try.

### **B. Manager Eisch’s Reasons for the Reassignments**

Manager Eisch testified he chose Prudhomme for reassignment to Iron River based on the fact Prudhomme lived the farthest north toward Iron River. Eisch said Prudhomme grew up in the Iron River area. Eisch made the facility closing announcement on Friday May 14 and personally met with Prudhomme that afternoon. According to Eisch, Prudhomme said he would give the Iron River assignment a shot on Monday May 17, but he did not think it would work out. Eisch asked Prudhomme to run the routes for a few weeks or a month and told him a semi-truck driver position was going to come open and Prudhomme could ultimately end up in that position. According to Manager Eisch, Prudhomme never told him if he reassigned him to Iron River he would quit. Eisch said he had no reason to believe that Prudhomme’s having to drive 60 miles to work would be a problem for him. Eisch explained he has a number of employees that drive over 60 miles each way to get to work. According to Eisch, mechanic Terry Micolety drives over 80 miles each way from his home to his assignment in Green Bay. Eisch’s office manager drives 74 miles each way to work and another employee drives 60 miles each way.

### **C. Certain Credibility Resolutions**

For reasons explained elsewhere herein, I credit Manager Eisch’s testimony and I credit his account of his reassignment meeting with Prudhomme. Accordingly, I find Prudhomme did not tell Eisch that he would quit his employment if he was reassigned to Iron River. I am fully persuaded Eisch testified truthfully when he said he had no reason to believe Prudhomme’s having to drive 60 miles each way to work would present a problem for Prudhomme. Manager Eisch credibly testified there was no agreement with the Union regarding the reassignment of employees and Prudhomme’s union activities played no role in his decision to reassign Prudhomme to Iron River.

## **III. Analysis, Discussion and Conclusions**

Government Counsel argues the Company effectively discharged Prudhomme. Since Prudhomme was not discharged but quit his employment, it is necessary to determine whether he was “constructively” discharged. A constructive discharge is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances which surround it. *Intercon I (Zercom)*, 333 NLRB 223 (2001). The Board’s test for a constructive discharge, as set forth in *Crystal Princeton Refining Co.*, 222 NLRB 1068 (1976) follows:

[t]here are two elements which must be proven to establish a ‘constructive discharge.’ First the burdens imposed upon the employee must cause, and be



intended to cause, a change in working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities.

- 5 The ***Wright Line*** test 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1<sup>st</sup> Cir. 1981), cert. denied 455 U.S. 989 (1982) applies to the second element of ***Crystal Princeton Refining Co.*** See: ***Davis Electric Wallingford Corp.***, 318 NLRB 375, 376 (1995).

10 The Company's decision to close its Peshtigo facility is not an issue herein. It is undisputed employees at the closed Peshtigo facility were all reassigned to other Company facilities without evidence of objection by the Union. The first issue is whether the Company deliberately made Prudhomme's working conditions so difficult, unpleasant, and unbearable as to force him to quit on the first day of his reassignment to Iron River. In determining whether a change is so difficult or unpleasant, I apply an objective standard and look to  
15 whether a reasonable person so situated would have quit. I am persuaded the Government failed to meet its burden on this critical element of the case. A mere reassignment, standing alone, does not constitute an unbearable, unpleasant, or difficult change in working conditions. Prudhomme's stated reasons for quitting on his first day of reassignment were "the distance" he would have to travel "the location" and "it would have been horrible work  
20 days until [he] at least learned the routes where [he] was going." The parties stipulated the distance from Prudhomme's residence to the Iron River facility is just over 62 miles. Prudhomme said he "probably" would have accepted a reassignment to the Green Bay facility. The parties stipulated the distance from Prudhomme's residence to the Green Bay facility is just over 63 miles. Thus, it appears preference, not distance, was Prudhomme's  
25 concern. Another of Prudhomme's reasons for quitting, that it would have been "horrible work" until he learned his new routes does not appear to be a well founded concern. First, he performed the Beecher route on his first day without missing anything. Second, he knew and had run the Goodman route when working for his parents' waste disposal company. Thus, at most, he only had two routes to learn. To the extent that Prudhomme did not like the snow  
30 levels at his new assignment is unpersuasive. The record is void of evidence on snow levels in the Iron River area compared to the Green Bay or Menominee areas. I am persuaded that Prudhomme's working conditions at Iron River were not so difficult, unbearable, or unpleasant as to cause a reasonable person to quit his/her employment. I note the Company has employees who drive 60 to 80 miles one way to arrive at their work assignments in all  
35 weather conditions. For example, Terry Micoley drives approximately 80 miles one way to his assignment at Green Bay. I also note Prudhomme quit his job one day after being reassigned. I am persuaded he did not continue working long enough to demonstrate his contention that driving, learning the routes or contending with weather conditions constituted such unpleasant conditions that would warrant his quitting. Prudhomme quit without seeking  
40 to have the Company address any of his concerns. Perhaps, if asked, the Company would have given him assistance in learning the two remaining routes he was assigned.

45 Having found the Government failed to establish one of two critical elements that must be proven to prevail in a constructive discharge case, I find the Complaint must be dismissed.

Assuming arguendo, the Government established the Company deliberately made working conditions so difficult, unbearable, or unpleasant as to force Prudhomme to quit I would nonetheless find the Government failed to establish the burdens were imposed because of Prudhomme's protected activities. The second element of a constructive discharge turns on  
 5 employer motivation and as such the Government must establish by a preponderance of the evidence that Prudhomme engaged in protected or union activity, the Company was aware of the activity, the protected or union activity was a substantial or motivating reason for the Company's action, and, there was a causal connection between the Company's animus and the discharge.

10 The Government established Prudhomme engaged in certain protected activity. For example, he spoke up at Company meetings about the benefits of having a union and talked about health care benefits and concerns. Prudhomme took a copy of the collective-bargaining agreement between the Company and Union for its Green Bay employees to one of the  
 15 Company held employee meetings at Peshtigo and talked about it. Prudhomme campaigned among his fellow workers in the 2003 union campaign at Peshtigo and wore union buttons at work albeit not in the presence of supervisors or managers. In the 2003 campaign, Prudhomme attended the initial union meeting at which authorization cards were signed. Thus, Prudhomme had union activities.

20 The Company was aware of certain of Prudhomme's union and protected activities. I note, however, there is no showing Manager Eisch was aware of Prudhomme's activities at the meetings or his other expressions of support for the Union such as union buttons on his hat.

25 There is a lack of evidence that animus toward Prudhomme's union or protected activities was a substantial or motivating factor in reassigning him to Iron River. I reject the Government's contention animus is established by the Company's opposing the Union during the 2003 campaign or by Manager Eisch's personal thoughts that employees were better off  
 30 without a union. Opposing unionization, without more, or simply stating a personal belief employees are better off without a union does not establish unlawful animus. I am unwilling to conclude the statement Prudhomme attributed to Menominee Site Manager Gerarden "you know we could all lose our jobs over this, me included" constitutes animus. No context was established for the conversation. The record only establishes the conversation took place at a  
 35 landfill where trucks were being off loaded. It is not clear what brought about the comment or whether it involved union concerns or work related matters. Prudhomme could only "assume" Gerarden meant the Union. I reject the Government's contention animus is established based on disparate treatment of Prudhomme and/or the asserted pretextual nature of the Company's justifications for reassigning Prudhomme. The evidence does not establish  
 40 either assertion. First, all Peshtigo employees were reassigned, Prudhomme included. Second, Prudhomme was chosen for Iron River because he lived closer to that facility than any other reassigned employee. Manager Eisch credibly testified that was the sole reason for Prudhomme's selection for Iron River.

45 I likewise reject the Government's contention the Company's conduct after Prudhomme quit demonstrates a lack of legitimate basis for his reassignment. Manager Eisch explained he did not hire a new employee for Iron River, rather than reassigning Prudhomme,

because it would have added a new employee to the payroll and his purpose for the reorganization was to reduce cost and be more efficient. The Company used Iron River Supervisor Smejka to cover the routes for the next two days after Prudhomme quit because of Prudhomme's abrupt departure after one day on the job. Supervisor Smejka's other duties kept him from running the routes longer. Manager Eisch brought in employee George Olsen to run the routes for about six weeks. Olsen had previously run the routes before they were transferred to Iron River. The Company hired Michael Forstrom as a trainee at Iron River, but after two weeks of training by Supervisor Smejka, Forstrom quit. Olsen again covered the routes for a while and thereafter Supervisor Smejka covered them again. The Company hired Brian Linnel to train as a "swing driver" able to fill in for others including employees at Iron River. James Lee was hired to train as a route driver. For a period of time the routes were again covered out of the Menominee facility. The Company hired Bob Armstrong to run the routes out of Iron River, however, Armstrong was later fired for having too many accidents. As of the trial herein, the routes were being covered from the Menominee facility. I am persuaded the above demonstrates nothing more than it has been difficult to retain waste disposal drivers in Iron River for unrelated or unexplained reasons but does not establish the Company's decision to operate the routes in question out of Iron River was somehow a pretextual justification to rid itself of Prudhomme. I am fully persuaded the evidence does not establish the Company reassigned Prudhomme for unlawfully motivated reasons. Assuming a *prima facie* case, I am persuaded the Company established it would have reassigned Prudhomme to Iron River, based solely on geography, even in the absence of any protected conduct on his part. Accordingly, I recommend the Complaint be dismissed.

### Conclusions of Law

The Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. The Company has not violated the Act in any manner alleged in the Complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:<sup>11</sup>

### ORDER

The Complaint is dismissed.

Dated, Washington, D.C.

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**William N. Cates**  
Associate Chief Judge

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<sup>11</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.